

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LEWIS JERMAINE CHAPMAN,)	
)	
Petitioner,)	
)	
v.)	1:11CV194
)	
JOEL HERRON,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Memorandum Opinion and Recommendation ("Recommendation") filed on June 5, 2013, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 25.) In the Recommendation, the Magistrate Judge recommends that Respondent's Motion to Dismiss (Doc. 9) be granted, that Respondent's Motion for Summary Judgment (Doc. 18) be denied as moot, that the Petition (Doc. 1) be dismissed, and that this action be dismissed. The Recommendation was served on the parties to this action on June 5, 2013. (Doc. 26.) Petitioner filed timely objections (Doc. 27) to the Recommendation.

In addition, Petitioner filed a document entitled "Motion for Civil Rule 60(b) on New Supreme Court Ruling, To Be Amended to Case #1:11CV194," in which he asks that the court not dismiss

his Petition due to the decision in McQuiggin v. Perkins, 569 U.S. ____, 133 S. Ct. 1924 (2013). (Doc. 28). Federal Rule of Civil Procedure 60(b) applies to final judgments, and no such final judgment has been entered in this case. Accordingly, the court will treat the foregoing "Motion" as a part of Petitioner's objection to the Recommendation.

Petitioner has also filed a document entitled "Motion to Amend Combined with Motion to Expand the Record Civil Rule 7," which this court construes as a motion to supplement the record. Petitioner attached the following motions filed in Guilford County Superior Court on June 10, 2009 to his motion: (1) a petition for writ of habeas corpus, (2) a motion to appoint substitute counsel, (3) a motion for a full stenographic transcript, and (4) a motion for the production of certain documents. (Doc. 30.) Petitioner contends that these documents could affect the calculation as to the timeliness of his Petition. This court has reviewed the state-court motions submitted by Petitioner. Those documents merely confirm the relevant dates as addressed in the Recommendation and have no effect on the conclusion that the Petition was untimely. Accordingly, Petitioner's motion does not prevent this court from ruling on the Recommendation, and the motion will be denied

pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Procedure 72 because this court finds no need to receive further evidence.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.¹

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation (Doc. 25) is **ADOPTED**. **IT IS FURTHER ORDERED** that Respondent's Motion to Dismiss (Doc. 9) is **GRANTED**, that Respondent's Motion for Summary Judgment (Doc. 18) is **DENIED AS MOOT**, that the Petition (Doc. 1) is **DISMISSED**, and that this

¹ The decision in McQuiggin does not require a different result. Nothing in the Petition, Petitioner's filings in response to Respondent's dismissal motion, or Petitioner's filing challenging the Recommendation sets forth information sufficient to make out a showing of actual innocence as contemplated in McQuiggin.

action is dismissed. **IT IS FURTHER ORDERED** that Petitioner's Motion to Amend Combined with Motion to Expand the Record Civil Rule 7 (Doc. 30) is **DENIED**. A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 9th day of September, 2013.


United States District Judge